

COMMONWEALTH OF MASSACHUSETTS DISTRICT COURT

UNITED STATES DISTRICT COURT

CIVIL ACTION NO.: 04 CV 10632 MEL

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MARY B. SMITH,

Plaintiff

vs.

DAVID C. NICHOLSON, TRUSTEE)
OF THE D.J.J. REALTY TRUST,)
DOMINIC M. SAWICKI,)
TRUSTEE OF THE DOMINIC M.)
SAWICKI NOMINEE TRUST,)
AND CAROL ANN WHITNEY)
AND GLENN WHITNEY,)

Defendants

**ANSWER OF THE DEFENDANT,
DAVID C. NICHOLSON, TRUSTEE OF
THE D.J.J. REALTY TRUST, TO THE
PLAINTIFF'S COMPLAINT**

Now comes the defendant, David C. Nicholson, Trustee of the D.J.J. Realty Trust, and in response to plaintiff's complaint by the counts and paragraphs numbered herein, says:

1. Paragraph 1 of the plaintiff's complaint does not appear to require a response, but the defendant denies he was negligent and denies the plaintiff was injured as a result of any acts or omissions of the defendant.
2. The defendant denies these allegations.
3. The defendant is without sufficient knowledge to admit or deny this allegation.
4. The defendant only admits that he is a resident of Harwich, MA.

COUNT I

5. The defendant denies these allegations.
6. The defendant denies these allegations.
7. The defendants deny these allegations.

8. Paragraph 8 of the plaintiff's complaint does not appear to require a response, but the defendant denies the plaintiff is entitled to damages.

WHEREFORE, the defendant demands Count I of plaintiff's complaint be dismissed with costs and with prejudice.

COUNT II

9. The defendant repeats and reavers his responses to paragraphs 5 through 7 the same as if fully written herein.
10. The defendant denies these allegations.
11. Paragraph 11 of the plaintiff's complaint does not appear to require a response, but the defendant denies the plaintiff is entitled to damages.

WHEREFORE, the defendant demands Count II of plaintiff's complaint be dismissed with costs and with prejudice.

COUNT III

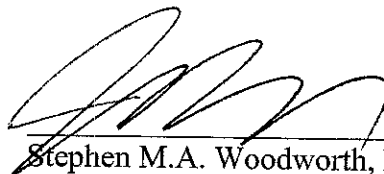
12. The defendant repeats and reavers his responses to paragraphs 5 through 7 the same as if fully written herein.
13. The defendant denies these allegations.

WHEREFORE, the defendant demands Count III of plaintiff's complaint be dismissed with costs and with prejudice.

And further answering in the affirmative, the defendant, David Nicholson, says:

1. The plaintiff's complaint fails to state a cause of action for which relief may be granted.
2. That if, in fact, the defendant was negligent, which he denies, the negligence of the plaintiff was of a greater degree than that of the defendant, whereby the plaintiff is barred from recovery.
3. That if, in fact, the defendant was negligent, which the defendant expressly denies, the plaintiff was also negligent and any recovery or verdict for the plaintiff must be reduced by a percentage equal to the comparative negligence of the plaintiff.
4. That if, in fact, the plaintiff was injured through the negligence of some third person, such negligence was on the part of one for whose conduct the defendant was not responsible.
5. The service of process has not been properly effected on the defendant.
6. The plaintiff has failed to commence this action in the appropriate jurisdiction.
7. The plaintiff has failed to commence this action in the appropriate venue.
8. If a defect existed upon the defendant's premises, which the defendant expressly denies, said defect was of an open and obvious nature.

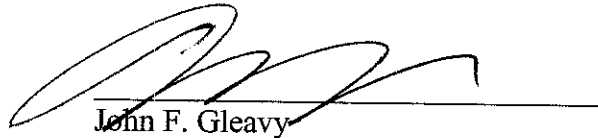
The defendant, David C. Nicholson, demands a trial by jury as to all triable issues.



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Attorney for Defendant,
David C. Nicholson
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AFFIDAVIT OF SERVICE

I, John F. Gleavy, do hereby certify that on this 22nd day of April, 2004, I gave notice of the foregoing Answer of the Defendant, David C. Nicholson, Trustee of the D.J.J. Realty Trust, to the Plaintiff's Complaint, to the plaintiff, by mailing copies thereof, postage prepaid to: Alfred J. Smith, Esq., 706 Beford Street, Stamford, CT 06901.


John F. Gleavy

/cjp